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## A SUMMARY OF THE AMERICANS WITH DISABILITIES ACT AND ITS SPECIFIC IMPLICATIONS FOR HEARING IMPAIRED PEOPLE

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On September 7, 1989, the U.S. Senate overwhelmingly passed (76-8) the Americans with Disabilities Act (ADA) of 1989. The bill (H.R. 2273) has now moved on to the House of Representatives where it has been referred to four House Committees and seven Subcommittees. President Bush has indicated his support for the ADA. The ADA's principal cosponsor in the Senate, Senator Tom Harkin of Iowa, considers the ADA the 20th century emancipation proclamation for people with disabilities. The following information has been prepared to help deafness rehabilitation professionals understand (1) the basic goals of the ADA and (2) the specific implications of the ADA for deaf and hard of hearing people.

### **The Purpose and Scope of the Americans with Disabilities Act**

The purpose of the ADA is to help bring persons with disabilities into the economic and social mainstream of American life by providing a clear and comprehensive national mandate to end discrimination against individuals with disabilities. The ADA extends civil rights protection for people with disabilities in private sector employment, public accommodations (e.g. theaters, hotels, restaurants, shopping centers, grocery stores), state and local government services, transportation, and telecommunications relay services.

### **Persons with Hearing Impairments are Protected**

The protections of the ADA will apply to persons with a disability. Disability is carefully defined in the ADA as physical or mental impairment that substantially limits one or more of the major life activities. It also includes people who have a record of such an impairment, or those regarded as having such an impairment. Specific disabilities are not listed in the ADA, but the Committee on Labor and Human Resources Report that accompanied the ADA in the Senate specifically

lists "hearing impairment" as a physical impairment that substantially limits hearing—a "major life activity."

### **Employment and Persons with Hearing Impairments**

Title I of the ADA specifies that employers, employment agencies, labor organizations and joint labor-management committees may **not** discriminate against any **qualified** individual with a disability in regard to any term, condition or privilege of employment. Employers are obligated to provide "reasonable accommodation" to the "qualified individual with a disability," unless it would result in an "undue hardship" in the operation of the business. Job applicants with hearing impairments will want to remember that terms in the ADA have exact meanings. A qualified person with a hearing impairment is a person who, "with or without reasonable accommodation, can perform the essential functions" of the job. Reasonable accommodation is a process in which barriers to the equal employment opportunities are eliminated for persons with disabilities. For qualified job applicants with hearing impairments, reasonable accommodation may include telephone handset amplifiers, telephones compatible with hearing aids, and telecommunication devices (TDDs). Reasonable accommodation for qualified persons with hearing impairments may also include job restructuring to eliminate nonessential elements of the job, part-time or modified work schedules, reassignment to a vacant position, appropriate adjustments or modifications of policies, examinations and training materials, the provision of qualified interpreters, and other similar actions. According to the ADA, accommodation is unreasonable if it imposes an "undue hardship" on the employer. Undue hardship means that the accom-

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modation would cause the employer significant difficulty, expense, disruption, or the accommodation would fundamentally alter the nature of the business or program. Job applicants with hearing impairments should know that employers will not be permitted to choose qualified, nondisabled individuals instead of equally qualified applicants with hearing impairments simply because of the need to provide reasonable accommodation to the qualified hearing impaired applicant. Gallaudet University President, Dr. I. King Jordan challenged exaggerated concerns about the costs of reasonably accommodating the qualified person with a hearing impairment in his testimony before the Committee on Labor and Human Resources:

Often, interpreters can be hired to do other things as well as interpret,—administrative secretaries or professional staff, even, who interpret on an only-as-needed basis. Most of the time, people hired who are deaf function without an interpreter except when they are in a meeting or when they are attending a workshop or when there is an essential need for one-to-one communication. I think it needs to be made clear to people that accommodations are not nearly as large as some people would lead us to believe.

Title I will go into effect two years after enactment. For the first two years after the effective date, employers with 25 or more employees will be covered. Thereafter, employers with 15 or more employees will be covered. Complaints about Title I violations will be filed with the Equal Employment Opportunity Commission (EEOC).

### Persons with Hearing Impairments and Public Services

Title II of the ADA will be of particular interest to persons with hearing impairments and mobility impairments (e.g., deafness and paraplegia, deafness and cerebral palsy), particularly those living in rural areas and small towns. Title II says that no qualified individual with a disability shall, by reason of the disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a **state or local government**. Simply stated, local and state government services, programs and activities may not discriminate against people with disabili-

ties, even if those state and local services do not receive Federal financial assistance. The special focus of Title II is accessible public transportation (not including air travel) because of its importance in integrating people with disabilities into society. All new fixed route buses must be made accessible unless a public transit authority can demonstrate that there are no lifts available from qualified manufacturers. A public transit authority must also provide paratransit (comparable special transportation services) for those individuals who cannot use mainline accessible transportation except when such services pose an undue financial burden on a transit authority. Title II generally takes effect 18 months after the date of enactment but new public buses ordered 30 days after enactment of the ADA must be accessible.

### People with Hearing Impairments and Public Accommodations Operated by Private Businesses

Title III of the ADA specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation operated by a private entity or business. Such accommodations include restaurants, hotels, doctor's offices, pharmacies, grocery stores, shopping centers, funeral parlors, museums, private schools, health spas, senior citizen centers, drug rehabilitation clinics, and other similar establishments. Private clubs and religious organizations are not obligated by Title III. Title III reflects Congressional concern about the economic, social and recreational isolation of people with disabilities. Existing facilities must be made accessible if the changes are "readily achievable," meaning easily accomplished without much difficulty or expense. Auxiliary aids (e.g., qualified interpreters, TDDs, TV decoders, visible emergency alarms) and services must be provided unless such provision would fundamentally alter the nature of the program or cause an undue burden. Keep in mind that all doctor's offices and grocery stores will not be required to have TDDs because the next section of the ADA, Title IV, establishes telecommunications relay services for persons with hearing impairments wishing to communicate with these privately operated public accommodations. But hotels that offer nondisabled individuals the opportunity to make outgoing calls should make

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the same opportunity available to persons with hearing impairments by providing a TDD. Hotels would not be required to have 24 hour interpreter services for persons with hearing impairments. It would be a violation of Title III for a drugstore to refuse to serve deaf people. It would be a violation of Title III for a physician specializing in the treatment of burns to refuse to treat a deaf patient with burn injuries because of the patient's deafness. Drug rehabilitation clinics may refuse to treat people who are not drug addicts, but they may not refuse to treat a drug addict because the addict is deaf. Title III will make it illegal for taxi services to refuse to serve people with hearing impairments. Public accommodations which do not allow dogs must modify their rules for deaf people with hearing ear dogs. Title III anticipates that the Attorney General will issue regulations requiring that hotels of a certain size have television closed caption decoders available. Open captioned feature films playing in movie theaters are not required under Title III, but filmmakers are encouraged to produce and distribute open-captioned versions of their films. Title III encourages movie theaters to have some preannounced screenings of captioned films. Public accommodations that provide film and slide shows to impart information are required to make such information accessible to people with hearing impairments under Title III.

New construction and major renovations of public accommodations and "potential places of employment" operated by private entities must be designed and constructed to be readily accessible and usable by people with disabilities. For example, new hotels should be constructed with audio loops in meeting areas and emergency flashing lights or alarms for people with hearing impairments.

The provisions of Title III become effective 18 months after the date of enactment. Title III incorporates enforcement provisions in private actions comparable to the applicable enforcement provisions in Title II of the Civil Rights Act of 1964 (injunctive relief) and provides for pattern and practice cases by the U.S. Attorney General, including the authority to seek monetary damages and civil penalties.

### **Telecommunications and Persons with Hearing Impairment**

Title IV of the ADA will require common carrier telephone companies (in-state phone companies and state-to-state phone companies) to provide

telecommunication relay services that will allow persons with hearing impairments who use TDDs to communicate with anyone (family, friends, businesses and employers) who has a telephone. This will make telephone service for persons with hearing impairments "functionally equivalent" (the same) to the telephone service available for hearing people. Title IV will help people with hearing impairments achieve greater levels of independence in employment, public accommodation and public services.

Title IV of the ADA will require that telecommunication relay services be available 24 hours a day, 7 days a week, without restrictions on the type, length, or number of calls made by the relay user. The rates for any relayed call will be no greater than the rates charged for a same voice call if dialed directly. The Federal Communications Commission (FCC) will develop regulations to carry out the goals of Title IV, including the requirement that telecommunication relay system operators have sufficient training to effectively meet the specialized communication needs of persons with hearing impairments. Relay operators will maintain strict confidentiality and will be prohibited from keeping any record of relay calls. The ADA mandates these minimum requirements, but the Act affords considerable flexibility to telephone companies and states in setting up and funding telecommunication relay systems. For example, Title IV would not require every telephone company or state regulator to provide a separate relay service. State regulators may designate a single "entity" or company to provide all relay services within the state. Relay services may be funded by allocating costs to local telephone companies based on the number of subscribers. The telephone company may then pass along its costs by adding a few cents to their general rates. Relay costs may also be funded through a monthly surcharge on all telephone users in the state. Currently, there are 17 states with formal telecommunications relay systems and 10 other states are scheduled to begin relay systems soon. Title IV requires that all telephone companies provide a telecommunication relay system within three years of the date of ADA enactment. The ADA anticipates that future technological advances are likely to improve the quality of the telecommunications relay systems and reduce overall costs. The advantages of the telecommunication relay systems required by Title IV extend not only to less isolated people with hearing impairments, but to families, friends, employers and mer-

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chants in the community. Title IV complaints will be registered with the Federal Communications Commission.

### The Last Section of the ADA

Title V of the ADA includes miscellaneous technical provisions likely to be of less direct interest to persons with hearing impairments. Title V includes a clause explaining the relationship between the provisions in the ADA and the provi-

sions of other State and Federal laws. Another clause of Title V explains that the ADA does not disrupt the current nature of insurance underwriting. This section makes clear that States are not immune from (cannot avoid) legal actions in Federal court for a violation of the ADA. Lastly, the courts or agencies dealing with ADA legal actions and administrative complaint proceedings are authorized to award reasonable attorney fees to the prevailing party.

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